

PA

28 ta' Frar 2017

**Tribunal ta' Revizjoni
tal-Ambjent u l-Ippjanar
Floriana**

Nru. ta' l-Avviz: PA 5384/16

Lokazzjoni: 3,61, Triq L-Imgħazel c/w, Triq Il-Qasam, Swieqi, Malta

Proposta: To sanction change of use from Class 1 to Class 4C shop at Ground Floor, minor alterations, sanctioning as built and fixing of sign.

Ref. Tagħna:

Ref. Tribunal:



Marco Aquilina

vs

L-Awtorita' ta' l-Ippjanar

L-Appellant Marco Aquilina jesponi bir-rispett:-

Illi fis-sena 2016, huwa ssottometta din l-applikazzjoni.

Illi minkejja rakkmandazjzoni favorevoli da parti tad-direttorat ta' l-Ippjanar fi hdan l-Awtorita ta' l-Ippjanar, l-proposta tieghu giet rifżutata, u dan permezz ta' decizjoni ippublikata fl- 1 ta' Frar 2017.

Bid-dovut rispett, l-appellant ihossu aggravat minn din id-decizjoni, u għaldaqstant qed jissottometti dan l-appell quddiem it-Tribunal għar-Revizjoni tal-Ambjent u l-Ippjanar (it-Tribunal).

Flimkien ma' din is-sottomissjoni qed jigu annetti:-

- Kopja tad- decizjoni ta' l-Awtorita li qed tigi appellata (Dok JA1).
- L-Ircevuta tal-hlas tad-dritt ta' l-appell (Dok JA2).

L-appellant jissottometti ghal kunsiderazzjoni tat-Tribunal dan li gej;

- 1.1 Illi tajjeb illi wiehed josserva illi l-oggezzjoni li fuqha l-istess Awtorita iddecidiet din l-proposta kienet oggezzjoni tardiva li ma kienetx rikonoxxuta a bazi ta' dak provdut fil-Kap. 552 tal-Ligijiet ta' Malta;
- 1.2 Illi f' kull kaz, kienet valida u korretta l-analizi tad-Direttorat ta' l-Ippjanar li rrakomanda b' mod favorevoli din l-applikazzjoni meta qal hekk:

The area within which the site is located is designated as a residential area where Class 4C land use is not permissible. Notwithstanding, policy FL-GNRL-1 of the General Policy relating to Regeneration/Consolidation Initiatives (2013), allows for justifiable departures from policies where proposals are deemed to be neighbour compatible and will not result in cumulative adverse impacts on the locality, and where the property under consideration lies within the development zone (but not within a Residential Priority Area and / or UCA) and on a site which is a legitimate established business outlet.

The architect submitted a survey of the streetscape/area showing that the streetscape is largely characterised by commercial developments that include catering outlets (doc. 53A) (the site marked as no. 5 was granted permission through PA4401/10 as a Class 4C use). Hence, the proposal can be justified in line with policy FL-GNRL-1 and does not detract from the objectives of the SPED, particularly Urban Objective 3.5 since given the site's context it will not negatively impact the residential amenity of the area¹.

¹ Vide para 4.8 tad-DPAR fil-paragrafu "Land Use"

1.3 Illi fil-kors ta' l-istess applikazzjoni saret ukoll referenza ghal- PA 29/16 kif ukoll il-PA 1932/12.

1.4 Illi ssir ukoll referenza ghall-policy NHHO01 li tipprovdi illi:

"Land-uses falling outside those mentioned above will not be considered favourably within the designated RAs, unless there are overriding reasons to locate such uses within these areas."

1.5 Illi meta il-kaz tressaq quddiem il-Kummissjoni, il-Kummissjoni iddifferiet il-kaz billi qalet hekk:

Board noted the objections from the residents. Propsoal infringes the LP Policy Map SW 2, the definition of "amenity" in the glossary of DC 15 and A3a and any other policy.

1.6 Illi meta gie emendat id-DPAR, ir-ragunijiet tar-rifjut kieni tnejn u cioe:

1. *The proposed development runs counter to the provisions of policy NHHO01 of the North Harbours Local Plan (2006) and Map SW2 which does not list Class 4C as an acceptable use in a residential area. The proposal therefore also runs counter to the SPED Urban Objective 3 which aims to protect and enhance the character and amenity of urban areas; u*
2. *The proposed development will create a deleterious impact on the amenity of the residential area and of the existing adjoining uses and therefore constitutes bad neighbour development. It is in conflict with SPED objectives TO 6.1, UO 3.5 and UO 4.2.*

1.7 Illi l-Kummissjoni ghamlet tagħha dawn ir-ragunijiet tant illi d-decizjoni hekk kif ikkomunikata lill-appellant tirrifletti dawn ir-ragunijiet.

- 1.8 Illi l-appellant iqis illi dak rifless mill-Kummissjoni matul l-ewwel seduta u dak effetivament deciz m' huwiex l-istess tant illi policies li issemmew fl-ewwel seduta lanqas biss jissemmew bhala ragunijiet ta' rifjut. Illi dan imur kontra dak provdut fil-Kap. 552 tal-Ligijiet ta' Malta u Ligijiet sussidjaraji – u senjatament kontra dak provdut fl-artikolu 13(4)(a) ta' l-AL 162/2016.
- 1.9 Illi minnghajr pregudizzju ghas-suepsost, imkien fid-decizjoni tagħha l-Awtorita ma resqet argument jew ragunijiet għalfejn dak sottomess mill-applikant a bazi tal-flexibility policy, tal-commitment fil-maadwar, kif ukoll a bazi ta' l-eccezzjoni kontemplata fil-Policy NHH001 m' għandiekk tapplika.
- 1.10 Illi huw car u manifest illi l-proposta ta' l-applikant hija in linea mal-policies fuq citati, u għaldaqstant jkellha tigi approvata, u dan kif ser jintwera fil-proceduri ta' dan l-appell.

Għaldaqstant, l-appellant qed jitlob li *l-files* li ssir referenza għalihom fil-process odjern jigu vverifikati mit-Tribunal u dan billi l-Awtorita' għandha tigi mitluba sabiex tipprezenta *l-files* msemmija minnu lit-Tribunal, u in segwitu ta' dan l-istess Tribunal għandu jhassar id-decizjoni ta' l-Awtorita u japprova il-permess hekk kif mitlub mill-appellant, u dana taht, u minnghajr pregudizzju għal kull decizjoni jew provvediment iehor li jogħgbu jiehu dan it-Tribunal.

Bir-Rispett,



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